Appendix A

Rule 19 of the United States Supreme Court

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of certiorari.

Appendix B

Opinion of the United States District Court, Southern District of New York (McLean, D. J.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 Civ. 716

JANE KATZ, *et al.*,

Plaintiffs,

against

JOHN MCAULAY, *et al.*,

Defendants.

MCLEAN, D. J.

Plaintiffs, students at the Ardsley High School, wish to engage in "leafleting" on the school premises, that is to say, they desire to hand out to their fellow students written documents expressing their views on public issues and soliciting money to support the causes in which they are interested. More specifically, in February 1970, plaintiffs attempted to distribute in the school building a one-page sheet entitled "Join the Conspiracy." In it they expressed their sympathy for certain "activists" then on trial on a criminal charge before Judge Hoffman in the United States District Court for the Northern District of Illinois. The leaflet stated:

"More than $33,000 per month is spent on their defense. Money is desperately needed to give these people a just trial. Money is needed to pay for transcripts. *PLEASE* contribute and or buy a button from Jane Katz, Carey Marvin, Greg Gottlieb or anyone else who is helping out."

The defendant school officials forbade plaintiffs to distribute this leaflet on school premises. In so doing they acted pursuant to a resolution of the Board of Regents of the State of New York which prohibits the soliciting of funds from school children in the public schools of this state, with the single exception that such solicitation is permitted on behalf of the American Junior Red Cross, provided that the school authorities consent.

Plaintiffs sue for a declaratory judgment declaring that "the policies, regulations and actions of the defendants * * * are unconstitutional." Plaintiffs also ask an injunction restraining defendants from preventing them from distributing this particular leaflet or any other leaflet which plaintiffs may wish to distribute soliciting funds for causes involving "matters of public interest." Jurisdiction is based on the Civil Rights Act, 42 U.S.C. §§1981 and 1983.

Plaintiffs have moved for a preliminary injunction. They claim that they have been discriminated against because Ardsley High School students are allowed (1) to solicit funds for the Junior Red Cross, (2) to sell newspapers, specifically the New York Times. The second claim is frivolous. As to the first, the Superintendent of Schools denies that there has been any solicitation in the High School, as distinct from the elementary schools, for the Junior Red Cross. He further states that he has now di-

rected that there shall be no solicitation in the future even for that organization. In view of this representation and promise, which I assume will be kept, that there will be no solicitations of funds at all even for so worthy a cause as the American Red Cross, the claim of discrimination does not seem to me sufficiently serious to justify a preliminary injunction on this ground.

Plaintiffs also claim that in preventing them from distributing this leaflet in the school building, defendants violated their First Amendment rights of free speech. This is a much more substantial claim. It must be borne in mind, however, that we are concerned on this motion with one particular document, a leaflet which contains a plea for financial contributions. There is no claim that defendants have forbidden the distribution of any other document which confined itself to expressions of opinion without a request for money. We are not concerned, therefore, with free speech in the abstract or with broad generalizations about the rights of students to announce their opinions to anyone sufficiently interested to read or listen. The narrow question before me is whether there is a sufficient likelihood that plaintiffs will prevail at the trial in their contention that the decision of the school authorities with respect to this or similar documents violated plaintiffs' First Amendment rights to require the issuance of a preliminary injunction.*

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*Normally the matter of irreparable injury would also be considered on a motion for a preliminary injunction. There is authority, however, for the proposition that irreparable injury is presumed in a First Amendment case. *Schnell* v. *City of Chicago*, 407 F.2d 1084 (7th Cir. 1969).

Plaintiffs place their main reliance on *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969). The Supreme Court there held that the school officials had violated the students' First Amendment rights by forbidding them to wear black armbands in silent protest against the Vietnam war. After stating that the First Amendment means what it says, the Court said (393 U.S. at 513):

> "We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances."

Fund solicitation by students on school premises was not in any way involved in *Tinker*. I have found no other case concerned with it. The ultimate question to be decided on the merits in the present case is whether the action of defendants pursuant to the Regents' rule in prohibiting such solicitation is a "reasonable regulation of speech-connected activities."

The Regents' rule was promulgated in 1923. Presumably the sort of student unrest so prevalent today would have been beyond the comprehension of the Regents of fifty years ago. Although there is no evidence on the subject in the present record, it seems safe to assume that the rule was not intended to prevent the exercise of free speech by students or by anyone else. The purpose would appear to have been to protect school children from annoyance at the hands of solicitors eager, for one reason or cause or another, to induce them to part with their pocket money. To my mind, it seems an eminently reasonable regulation.

I am not called upon to decide the ultimate merits now. On the scanty facts contained in the affidavits in this motion, and in the present state of the law, I do not feel that I can say that there is a strong likelihood of plaintiffs' ultimate success at the trial.

Pursuant to Rule 52(a), this opinion constitutes the court's findings of fact and conclusions of law.

The motion for a preliminary injunction is denied.

So ordered.

Dated: May 8, 1970

EDMOND C. MCLEAN
U. S. D. J.

Appendix C

Affidavit of Burt P. Johnson in Opposition to Motion for Preliminary Injunction

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

70 Civ. 716

[SAME TITLE]

State of New York)
County of New York) ss.:

I, BURT P. JOHNSON, being duly sworn, say that I am a defendant in the above entitled action and I am Superintendent of Schools of Union Free School District No. 5; I have read the Order to Show Cause bringing on this motion together with the verified complaint and am fully familiar with all the proceedings which have heretofore taken place in this matter.

Beginning in 1958, when I first became associated with the Ardsley Public Schools in the capacity of Chief Executive Administrator, to my knowledge since that time there has been no dissemination of any materal soliciting funds from the students in the Ardsley High School for purposes other than those connected with the school activities.

Approximately ten years ago, I directed the Principal at the Ardsley High School that no solicitation of funds for outside activities would be permitted and I have adhered to this practice to date.

Appendix C

During last Fall and during the Fall in preceding years, there was solicitation by the Ardsley Chapter of the Junior Red Cross in the Elementary Schools. To my knowledge there has not been since my tenure, any solicitation in the Ardsley High School, which is an entirely distinct school from the elementary schools and is separated from them by a distance of over one-half mile. Only solicitation in the High School is involved in the instant motion.

I have written the National Chapter of the Junior Red Cross informing them that there shall be no further solicitation by them in the Ardsley School System.

The "flyer" which is attached to the affidavit of Elaine Finsilver submitted in support of the Motion for Preliminary Injunction solicits funds on behalf of eight individuals in no way connected with the Ardsley High School activities. Consequently, the solicitation being prohibited by my direction to the Principal of the High School, in accordance with such direction, those soliciting through the use of the "flyer" were instructed to discontinue such solicitation.

Since 1958, I have had at least seventy-five to one hundred requests to use the school properties for solicitation of funds, all of which have been refused.

To permit solicitation of funds on the school property and within the school buildings would, in my judgment, lead to embarrassment and intimidation of students and would encourage further and different solicitations which would be difficult, if not impossible, to control.

WHEREFORE, I respectfully submit that the plaintiffs' motion for a preliminary injunction should be denied.

/s/ Burt P. Johnson

BURT P. JOHNSON